

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Attorneys for Plaintiffs

BLUE LIVES MATTER NYC, INC. and	:	
STANDING UP FOR NYC, INC.	:	Civil Action No.:
Plaintiffs,		COMPLAINT
v.	:	
BILL DE BLASIO , in his official capacity as	:	
Mayor of New York City, New York , and POLLY	:	
TROTTERBERG , Commissioner of the New	:	
York City Department of Transportation,	:	
Defendants.		

Plaintiffs, **BLUE LIVES MATTER NYC, INC. and STANDING UP FOR NYC, INC.**

by and through their undersigned counsel, file this Complaint against Defendants **BILL de**
BLASIO and **POLLY TROTTERBERG** in their official capacities for violations of 42 §
'U.S.C. 1983 and Article 1 § 8 of the New York Constitution, and in support thereof state as
follows:

PRELIMINARY STATEMENT

This is a civil action for declaratory and injunctive relief to redress and prevent the violation of the First Amendment of the United States Constitution and Article 1 § 8 of the New York State Constitution. Defendants opened a forum for political speech in front of Trump Tower and seven other city locations by approving the political message “Black Lives Matter” to be painted on city streets otherwise strictly limited to traffic-related messages. This message was sponsored by the private non-profit Black Lives Matter and by other activists. Once Defendants open a forum for one, you must open that forum for all, and may not deny Plaintiffs’ reasonable access to the same forum based on the content of their message. Defendants de Blasio and Trottenberg have allowed city property to be used by private speakers according to rules that the Defendants prescribe. Under the First Amendment, however, those rules cannot discriminate on the basis of viewpoint. But, that is exactly what Defendants have done here.

JURISDICTION & VENUE

1. This action is brought pursuant to 42 U.S.C. § 1983 and 42 § U.S.C. 1988, and the First Amendment to the United States Constitution.
2. The Court has jurisdiction over Plaintiffs’ federal law claims under 42 U.S.C. § 1331 and 28 U.S.C. § 1343.
3. The Court has jurisdiction over Plaintiffs’ supplemental state court claims under 28 U.S.C. 1367.
4. Venue is proper in the Southern District of New York under 28 § 1391(b) in that a substantial part of the events giving rise to Plaintiffs’ claims occurred in this district.

PARTIES

5. Plaintiff **BLUE LIVES MATTER NYC, INC.** is a 501(c)(3) nonprofit organization created to help Law Enforcement Officers and their families during their time of need and is a registered charity in New York. **BLUE LIVES MATTERS NYC, INC.** is based in New York City and holds events in New York City, and has thousands of supporters nationwide.

6. Plaintiff **STANDING UP FOR NYC, INC.** is a 501(c)(4) nonprofit organization based in Brooklyn, New York.

7. Defendant **BILL de BLASIO** is the Mayor of New York City. Defendant de Blasio's offices are located at City Hall, New York, New York. Defendant de Blasio is being sued *in his official capacity.*

8. Defendant **POLLY TROTTERBERG** is the Commissioner of the New York City Department of Transportation (“DOT”). Defendant Trottenberg’s offices are located at 80 Maiden Lane, 17th Floor, New York, New York. Defendant Trottenberg is being sued *in her official capacity.*

JURY DEMAND

9. Plaintiffs demand trial by jury of all issues properly triable thereby pursuant to Fed. R. Civ. P. 38(b).

STATEMENT OF FACTS

10. Over thirty police officers have been killed in the line of duty by firearms this year. Plaintiffs Blue Lives Matter NYC, Inc. and Standing up for NYC, Inc. would like to honor the lives and memory of public servants whose heroic lives ended too soon.

11. To honor the lives and memory of the slain police officers, Plaintiffs have requested to paint a “Blue Lives Matter” mural by One Police Plaza similar to the “Black Lives Matter” murals approved by Defendants and painted by Defendant de Blasio in front of Trump Tower at Fifth Avenue between 56th and 57th Streets and on other streets located throughout the city, other city civil servants, members of the “Black Lives Matter” movement and volunteers. These street locations are normally reserved exclusively for traffic-related information.

12. The requested “Blue Lives Matter” mural is imperative and significant to boost morale for the men and women of all races, color and creed who wear the blue uniform proudly, in response to a city that now scorns and defunds them. This message is also imperative to its viewers, city residents and visitors who faithfully depend on the commitment and dedication of the police for their safety and livelihood. Both speakers and listeners/viewers have protected rights under the First Amendment.

13. The “Black Lives Matter” message is highly political and is generally understood by the public to be and support a general anti-police message, include some extreme measures as defunding the police and ending police activity that has proven highly effective to protect the

public safety. Plaintiffs in no way support unlawful or abhorrent practices but do strongly support the necessary and appropriate activities of the police to protect the public safety and well-being.

14. The Defendants could have stood up to the anti-police crowds and reminded them that the New York Police Department has saved thousands of lives by taking illegal handguns off the street, and that a declining prison rate was another consequence. It was the New York Police Department who had made New York the safest big city in America. Instead, Defendants deny the “Blue Lives Matter” request to paint their mural. Without balance in messages seen by the public, the police are left without a vocal defense and more prone to public ridicule thereby undermining morale, public support, and making New York demonstrably less safe. “Twenty-seven shootings occurred over the July 4 weekend in New York City, which injured 36 individuals and killed four. This follows an extremely volatile June, in which the city saw its number of shootings double, compared to same period last year.¹

15. City Council Member Robert Holden tweeted on July 6, 2020 the following, “Last night was a prime example of the damage defunding the police and all the other anti-police litigation, that the NYC Council passed, has done to this city. Ten shootings last night and the uncontrollable fireworks gave the impression of a war torn city.”

16. The “Black Lives Matter” (“BLM”) movement was founded in 2013 in response to the acquittal of the acquittal of a Hispanic man, George Zimmerman. It is a decentralized movement in the United States advocating for civil disobedience in protest against incidents of police brutality and racially motivated violence against African-American people. Its founder is a

¹ cityandstateny.com, July 6, 2020.

self-described Marxist highly trained in protest ideology. The relevance is that BLM is so highly political and understood as partisan and political that it demands a balancing response.

17. The movement became nationally recognized for street demonstrations following the 2014 deaths of two African Americans in violence related to police, culminating in protests – some non-violent, some decidedly violent – around the country.

18. BLM is a political movement and partisan organization. In the summer of 2015, BLM activists became involved in the 2016 United States presidential election, its participants essentially unanimously supporting the Democratic presidential candidate, Hillary Clinton.

19. On July 7, 2016, a BLM protest was held in Dallas, Texas, following which one participant, an African American named Micah Xavier Johnson, opened fire in an ambush, killing five Dallas police officers and wounding seven others and two civilians. The gunman was then killed by a robot-delivered bomb. Before he died, according to police, Johnson said that "he was upset about Black Lives Matter," and that "he wanted to kill white people, especially white officers." The next day, July 8, more than 100 people were arrested at Black Lives Matter protests across the United States.

20. The movement returned to national headlines and gained further international attention during the global George Floyd protests in 2020 following George Floyd's killing by a Minneapolis police officer. An estimated 15 million to 26 million people participated in the 2020 Black Lives Matter protests in the United States, making Black Lives Matter one of the largest movements in U.S. history. The movement has advocated to "defund the police" and "invest directly" into black communities and in "alternative emergency response models." The

Defendant de Blasio has already agreed to defund the NYPD by reducing the size of the police force and shifting functions away from police to civilian agencies.²

21. On May 30, 2020, Defendant de Blasio's daughter was arrested along with approximately 100 other demonstrators who were blocking roads and throwing "unknown" objects in the direction of the police.

22. On June 7, 2020, Defendant de Blasio announced that he would begin defunding the New York City Police Department.

23. The BLM movement is for all practical purposes affiliated with the Democratic Party, notwithstanding expressions of frustration by BLM activists with the leadership of that party. When you click to make a donation on the BLM website, you are making a donation to the Democratic Party.

24. BLM is unquestionably hostile to the Republican Party, the Police and to President Donald J. Trump.

25. According to a June 17, 2020 article titled "*How Black Lives Matter Could Reshape the 2020 Elections*" in Time magazine, BLM protests "could be a political bonanza for Democrats, political strategists say, galvanizing its most reliable voting bloc and boosting voter registration."

26. Few politicians have made the commitment to BLM more central to their work in government than the Mayor of the City of New York, defendant Bill De Blasio, who is a Democrat.

² npr.org, July 1, 2020. "De Blasio on Shifting \$1 Billion from NYPD: 'We think It's the Right Thing to do.'"

27. De Blasio's executive orders did forbid all peaceful protests because of the pandemic until the unfortunate death of George Floyd. Anyone who protested prior to the death of George Floyd, was thrown in jail or handed a summons with a fine of up to \$1,000.00. After the death of George Floyd, thousands and thousands of protesters including BLM were allowed and encouraged to protest throughout the City of New York. Since the Mayor agreed with the content of these protests, they were allowed to protest during the pandemic while others and several businesses remained shuttered.

28. A New York Post article from July 10, 2020 entitled, "De Blasio doubles down on support of Black Lives Matter protests in NYC" observed as follows:

"Mayor Bill de Blasio doubled down Friday on his decision to bless Black Lives Matter marches wherever and whenever they may happen while pulling the permits for the Big Apple's usual slate of summertime parades and street festivals due to the threat posed by large gatherings amid the coronavirus.

"I've said many times — the protests, this is a particular moment in history where 400 years of oppression, 400 years of racism are being addressed in a very powerful way," Hizzoner said.

"That can't compare to anything else."

De Blasio made the remarks after again reiterating that it would be unsafe to allow parades and festivals that often bring tens of thousands to the streets because of the risk of transmitting COVID-19 — and the need to use the city's public space and resources to bolster its street closure programs for pedestrians and restaurants."

29. As part of that commitment, on the morning of July 9, 2020, New York City employees – including defendant De Blasio – and private citizens began painting "Black Lives

Matter” in large, bright yellow letters, on Fifth Avenue, overtly and deliberately in front of Trump Tower. The same mural has been duplicated in several locations throughout the city.

30. The location of the “mural” on Fifth Avenue is directly in front of Trump Tower, a building owned and named after President Donald J. Trump and where he maintains a residence.

31. An additional seven “Black Lives Matter” murals were painted throughout New York City.

32. In addition to the mural on Fifth Avenue between 56th and 57th Streets, “Black Lives Matter” murals were painted in:

- a. Queens- Jamaica Avenue between 150th and 153rd Street;
- b. The Bronx- Morris Avenue between 161st and 162nd Street;
- c. Staten Island- Richmond Terrace by Hamilton Avenue;
- d. Brooklyn- Fulton Street outside Billie Holiday Theatre;
- e. Brooklyn- Joralemon Street between Court St. and Boerum Place;
- f. Manhattan- Centre Street between Worth and Reade Street; and
- g. Manhattan- Adam Clayton Powell Blvd. between 125th and 127th Street.

33. Upon information and belief, the “Black Lives Matter” movement was not required to make a formal application for a permit to the Department of Transportation or to any other city agency to paint eight murals across New York City.

34. Upon information and relief, the “Black Lives Matter” movement received “de facto permits” to paint eight murals across New York City.

35. Defendants are engaging in political speech and the painting of the Black Lives Matter mural was not germane to any government function.

36. Since the painting of the Black Lives Matter mural was not germane to any legitimate function of the City of New York, the City of New York has opened up a public forum for private speech on its public streets, at least in the geographic space proximate to Trump Tower or proximate to any of the seven other “Black Lives Matter” murals throughout New York City.

37. At the very least, the painting of the Black Lives Matter Mural created a limited purpose public forum in general or adjacent to Trump Tower and the seven other “Black Lives Matter” murals throughout New York City.

38. Plaintiff applied for and was denied a permit for its competing message on the basis of the content and viewpoint of its message in violation of the First Amendment of the United States Constitution and Article 1 § 8 of the New York State Constitution. Plaintiffs’ request was denied by defendant de Blasio during a press conference on July 23, 2020.

39. According to the New York Times, “The public art project is the latest battle in a feud between President Trump and Mayor Bill De Blasio.” As Forbes magazine wrote, “Last month, at the height of the Black Lives Matter protests, Mayor de Blasio announced that each borough in New York City would get its own BLM mural. But location of this one in Manhattan can only be viewed at a direct dig at the president.”

40. According to the website of the local CBS affiliate in New York, CBSN, “As part

of a bigger racial justice movement, matching murals have been popping up in cities across the country, starting in Washington, D.C. Here at home, the mayor vowed that the BLM slogan will appear in every borough in the city. The unique thing about this one is its location: Right in front of Trump Tower.”

41. On Artnet News on July 10, 2020, the following was written:

There’s a new view from President Donald Trump’s New York City apartment. Painted in giant yellow letters on the street below Trump Tower are the words “Black Lives Matter,” one of seven similar murals painted on sites throughout the city at the behest of Mayor Bill de Blasio.

“The president is a disgrace to the values we cherish in New York City,” Julia Arredondo, a spokesperson for the mayor, told the New York Times when the plan was unveiled last month.

“Any time [Trump] wants to set foot in the place he claims is his hometown, he should be reminded Black Lives Matter.”

42. Upon information and belief, this painting of a public street, described by defendant De Blasio as a “mural,” was undertaken by the New York City Department of Transportation (“DOT”) at an initial cost of approximately \$6,000 in funds allocated to the DOT for transportation-related purposes.

43. Pursuant to regulations posted by the City of New York at NYC Park’s website: <https://www.nycgovparks.org/art-and-antiquities/temporary-guidelines/murals>, citizens and organizations may only submit requests to paint murals in NYC Parks, not on New York City streets.

44. Nonetheless, based on the apparent change of policy concerning murals, on the evening of July 15, 2020, plaintiff submitted a request to defendant de Blasio requesting to paint a message of its own on a New York City street, stating as follows:

"It has come to our attention that you generously allowed and supported the painting of a "Black Lives Matter" mural on the Fifth Avenue in Manhattan to bring more awareness to the issue of systemic racism and discrimination against African Americans. We applaud your support of that cause.

As you may know, as of today, over 30 Police Officers have been killed in line of duty by firearms this year alone. On behalf of a non-profit organization "Blue Lives Matter NYC" and an online community "Standing up for NYC" we would like to raise awareness regarding preventable murders of those who swore an oath to serve and protect their communities, and honor the lives and memory of public servants whose heroic lives ended too soon. Therefore, we respectfully request that you allow us to use our own funds and resources to paint a similar "Blue Lives Matter" mural on Madison Street approaching intersection with Pearl Street (by 1 Police Plaza). Should this location be rejected for any reason we urge you to consider an alternative site for the mural on Broadway near its intersection with W 45th Street. We count on your unbiased support."

45. On July 15, 2020, plaintiffs transmitted a hard copy of the above-referenced request via USPS Express Mail to Mayor de Blasio's office, which was received on July 16, 2020.

46. Plaintiffs' request was denied by defendant de Blasio during a press conference on July 23, 2020. (Please see Mayor De Blasio's Official Transcript from July 23, 2020 attached as Exhibit A.)

47. When questioned about the request, defendant de Blasio stated that the Black Lives Matter movement "transcends any notion of politics," and he defended allowing the words to be painted on streets across the city while not approving similar mural requests from Plaintiff Blue Lives Matter. "This is about something much bigger than any one group," de Blasio added. "This is about righting a wrong and moving forward. So I think that's the right approach."

48. Upon information and belief, the Black Lives Matter organization did not submit a formal request through established channels to submit such requests to paint its mural on Fifth Avenue or other duplicative murals that have subsequently been allowed, by defendants, to be painted on streets throughout New York City.

49. A New York Post report published on July 23, 2020 states: When asked if de Blasio will approve the requested "Blue Lives Matter" mural, City Hall spokeswoman Julia Arredondo said last week: "It's not open season to paint our streets. DOT has an application process, and requests must go through their site, not open letters." "For all lives to matter, we must first make clear that black lives matter. That is why we approved the murals and met those words with actions," Arredondo said.

50. On information and belief, there is no "application process" for painting political messages, murals or other non-traffic-related messages on New York City streets.

51. Defendant de Blasio ran in the Democratic primary for President in 2020.

52. The failure of de Blasio's presidential run is widely considered to have damaged his future political prospects. "I think immediately it didn't help," de Blasio biographer Joseph Viteritti told the New York Post about the campaign's effect on de Blasio's profile. "In the long run, I'm not sure it's going to be better."

53. According to the article, "De Blasio had hoped to raise his national profile — but his missteps may have not helped his chances at a Cabinet-level position with a potential Democratic administration. and, on information and belief, has political ambitions to run for national or other elected office as a Democrat after the end of his final term as Mayor of New York City or to be appointed to a prominent position in an anticipated Biden Administration."

54. On information and belief, de Blasio's conduct as alleged herein is intended as a political gesture to the BLM movement and those sympathetic to it which has been done in order to overcome the damage done by his political failure as a presidential candidate and thereby enhance his future prospects as a Democratic candidate for office or appointee, and by rallying BLM support for Democrats, including in the 2020 Presidential election.

55. Consistent with his political ambitions, defendant de Blasio also refused to allow Blue Lives Matter, a pro-police group, or Standing Up for NYC, a group of city residents who are antipathetic to the Mayor's politics and policies, to paint messages of their own on city streets. Hostility to police is a current platform of urban Democratic Party politics and is consistent with the BLM platform.

56. Explaining the distinction, de Blasio stated, "The original sin of the United States of America, slavery, and all of the effects over 400 years being brought out in the open in a new way and a chance for this country to get it right, to address this problem, to move forward, and

it's summarized in the three words 'Black Lives Matter,' so this is about something much bigger than any one group, this is about righting a wrong and moving us all forward."

57. Even without reference to his own political ambitions, defendant de Blasio's statements, justifications and rationale for painting or permitting the painting of the BLM "mural" on Fifth Avenue demonstrate that its entire purpose is political and partisan, not civic, safety- related or cultural.

58. Messages by private groups that are placed on city streets are private speech, not government speech. Defendants cannot forbid private speech based on its viewpoint and by denying "Blue Lives Matter," that is what they have done here in violation of the First Amendment and Article 1 § 8 of the New York State Constitution.

59. Plaintiffs have already applied for a permit but this is a futile act in light of Defendants' announcement that they will not permit Plaintiffs' request, in particular, or any competing message in general.

FIRST CLAIM FOR RELIEF

VIOLATION OF 42 U.S.C. § 1983

FIRST AMENDMENT

60. Plaintiff incorporates paragraphs 1-59 by reference as if fully set forth herein.

61. The Defendants have discriminated against the Plaintiffs based on the ideas and message that Plaintiffs support, in clear violation of the First Amendment.

62. The Defendants have barred the Plaintiffs from expressing their viewpoint while allowing other groups to express their viewpoint, and this type of restriction is exactly the type which the First Amendment is designed to erase.

63. Defendants, acting under color of New York law, have deprived and continue to deprive Plaintiffs of their First Amendment Rights guaranteed by the U.S. Constitution in violation of 42 U.S.C. § 1983, by, inter alia:

- a. Allowing New York City streets to be used for the painting of partisan political messages based on the viewpoints favored by Defendant de Blasio and other political leaders;
- b. Denying Plaintiffs and others the timely opportunity to use New York City streets to paint other own political or expressive messages;
- c. Denying Plaintiffs from expressing their viewpoints because Defendants do not agree with the content of Plaintiffs' viewpoints while allowing other groups to express their viewpoints whose content they agree with such as "Black Lives Matter";
- d. Depriving Plaintiffs of their right to paint a political or expressive message on a New York City street for reasons that are not narrowly tailored to a compelling government interest;
- e. Depriving plaintiff of its right to paint a political or expressive message on a New York City street for reasons that are not substantially related to an important government interest;
- f. Failing to provide a reasonable basis for denying plaintiff the opportunity to paint its political or expressive message on a New York City street;
- g. Favoring the viewpoint of the political message painted on Fifth Avenue and other New York City streets over the message Plaintiffs have requested to paint;

- h. Expending DOT funds on painting, maintaining, and endorsing the expressive message of one organization over Plaintiffs' message;
- i. Failing to provide reasonable, non-arbitrary processes and procedures for timely consideration of Plaintiffs' expressive message; and
- j. Engaging in preferential political speech in favor of a partisan organization that supports Defendant de Blasio's own political ambitions.

64. In order to protect their rights, Plaintiffs file this suit against Defendants for preliminary and permanent injunctive relief pursuant to 42 U.S.C. § 1983.

65. All conditions precedent to the bringing of this action have either occurred or been performed by Plaintiffs or waived by the Defendants.

66. The Plaintiffs are entitled to a preliminary injunction and, following trial, a permanent injunction against the Defendants to compel them to grant Plaintiffs' application and/or request to paint a "Blue Lives Matter" mural.

67. Plaintiffs can demonstrate that they have suffered an irreparable injury, that they have no adequate remedy at law, that there is a likelihood of success on the merits, the balance of hardships favor the Plaintiffs, and injunctive relief would not adversely affect public policy or public interest.

68. Plaintiffs have retained the undersigned counsel to prosecute this action. Plaintiffs will be seeking reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

SECOND CLAIM FOR RELIEF

(New York State Free Speech Claim)

69. Plaintiffs repeat and reallege paragraphs 1-68 with the same force and effect as if they were fully set forth herein.

70. Defendants have denied Plaintiffs' request/application to express their viewpoint by painting a "Blue Lives Matter" mural while allowing other groups to express their viewpoints, in violation of Plaintiffs' rights to freedom of speech under Article 1, § 8 of the New York State Constitution.

71. Defendants have denied Plaintiffs from expressing their viewpoints because Defendants do not agree with the content of Plaintiffs' viewpoints while allowing other groups to express their viewpoints whose content they agree with such as "Black Lives Matter".

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Declare Defendants' conduct unconstitutional in violation of plaintiff's First Amendment Rights and 42 U.S.C. § 1983;
- b. Declare Defendants' conduct unconstitutional in violation of Article 1 § 8 of the New York State Constitution;
- c. Order Defendants to issue a permit allowing Plaintiffs to paint its expressive message at the location Plaintiffs requested, or on Fifth Avenue at or near the "Black Lives Matter" mural or one of the substantially similar streets Plaintiffs proposed as reasonable alternatives for the

same number of days as the “Black Lives Matter” mural has and will continue to exist on Fifth Avenue;

- d. Enjoin Defendants from continuing to deprive plaintiff of its First Amendment rights as guaranteed by 42 U.S.C. § 1983;
- e. Award attorney’s fees and costs pursuant to 42 U.S.C. § 1988; and
- f. Grant any further relief this Court deems just and proper.

Dated: August 4, 2020

Respectfully submitted,

THE MERMIGIS LAW GROUP, P.C.

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